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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/242,014	04/05/1999	ACHIM SCHMITT	CM11890	9441

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/242,014
Filing Date: April 05, 1999
Appellant(s): SCHMITT, ACHIM

Kevin C. Johnson
For Appellant

MAILED
JAN 24 2006
Group 3700

EXAMINER'S ANSWER

This is in response to the appeal brief filed 19 October 2005 appealing from the Office action mailed 25 August 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Appeal No. 2005-1242

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakanishi et al. (5,201,727).

Nakanishi discloses an absorbent article, as shown in figure 2, for wear in an undergarment, as described in column 1, lines 5-10. The article has a longitudinal axis and a transverse axis, and comprises a main body portion 1 having a wearer facing surface 2 and a garment facing surface 3. Side wrapping elements 5 extend laterally from the main body portion 1 and are integral with the main body portion 1, as shown in figure 1b. The side wrapping elements 5 are folded along fold lines and attached to the garment facing side 3 of the main body portion 1 adhering adhesive portions 6 and 7, as shown in figures 1a and 1b, and disclosed in column 5, lines 65-68.

(10) Response to Argument

In response to the Appellant's argument that Nakanishi fails to disclose wrapping elements in an in-use-position prior to use, it is noted that Nakanishi shows wrapping elements positioned prior to use in the configuration in which the wrapping elements will be during use. Nakanishi shows in figures 1b, 7b, and 9b, the wrapping elements (5, 15) folded along fold lines (22) and attached to the garment facing side (3, 13) of the main body portion (1, 11). During use, the wrapping elements of Nakanishi are folded along the folding lines and positioned adjacent the garment facing side of the main body portion, with the garment of the user therebetween. Thus, the position of the wrapping elements prior to use, such as during delivery or packaging, is the same as the position

of the wrapping elements during use. The wrapping elements are therefore pre-positioned in an in-use-position prior to use.

In response to the Appellant's argument that the wrapping elements of Nakanishi must be manipulated numerous times to be in an in-use-position, it is noted that the wrapping elements of Nakanishi are do not require manipulation to be in an in-use-position since they are already in an in-use position, as described in the paragraph above. The wrapping elements of Nakanishi must be manipulated to be placed on a garment for use, but the instant claim does not require that the wrapping elements not be manipulated prior to placement on a garment. Nakanishi fulfills all the limitations of the instant claim, and shows the wrapping elements in an in-use-position prior to use.

The term 'in-use-position' is not given a clear definition in the instant specification, nor is it disclosed as limited to a position that requires no manipulation of the wrapping elements during use of the article. Therefore, the plain meaning of 'in-use-position' is considered during examination of the claim. During use of the article disclosed by Nakanishi, the wrapping elements are folded along the fold lines and placed beneath the garment facing side of the main body portion of the article. This is the in-use-position of the wrapping elements. Prior to use of the article, the wrapping elements are also folded along the fold lines and placed beneath the garment facing side, as shown in figures 1b, 7b, and 9b. Therefore, when the claim is considered in light of the plain meaning of the claim language, the wrapping elements of Nakanishi are pre-positioned in an in-use-position prior to use of the article.

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(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

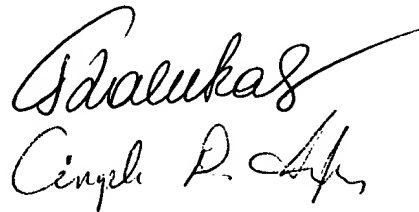
Respectfully submitted,

C. Lynne Anderson

Conferees:

Tanya Zalukleava

Angela Sykes

The image shows two handwritten signatures in black ink. The first signature, for Tanya Zalukleava, is written in a cursive style with a long, sweeping horizontal line extending to the right. The second signature, for Angela Sykes, is also in cursive and is positioned directly below the first signature.